Supreme Court of Pennsylvania.

DE BARRY *vs.* WITHERS & PETERSON.

An accommodation acceptor having paid a bill for which no funds are provided by the drawer, is entitled to recover the amount from him.

The suit must be in the name of the payee to the use of the acceptor.

But if the drawer make an express promise to the acceptor to pay the debt to him, he may sue in his own name.

Semble, that this is the general rule in the United States, but in England some new consideration is required to enable the acceptor to sue in his own name.

The opinion of the Court was delivered, March 2d 1863, by

READ, J.—An accommodation acceptor having paid a bill for which no funds are provided by the drawer, is entitled to recover the amount from the drawer; for the law, in the absence of any express contract, implies a contract to indemnify. But whether the action be for money paid or specially for not indemnifying the plaintiff, still it is only a chose in action which is assignable in equity, and therefore the suit must be in the name of the assignor for the use of the assignee. But as the assignee is the real owner, it would seem but just if the debtor chooses expressly to promise to the assignee to pay the debt to him, that the assignee might sustain an action against him, in his own name; and this was the view taken in the early English cases of *Fenner* vs. *Meares*, 2 W. Bl. Rep. 1269, and *Israel* vs. *Douglass*, 1 H. Bl. Rep. 239. It would seem, however, that in England the rule at present is to require the consideration of forbearance, or some other new consideration, to enable the assignee to proceed in his own name: 1 Chitty's Pl. 15; Addison on Contracts 984.

In America, however, the early English doctrine has been adopted, and this is clearly the sound rule, for it is a promise to pay to the real owner of the debt, requiring no other consideration than the fact that the debtor is morally and equitably bound to pay it to his actual creditor, and is not allowed to discharge himself by paying it to any other person. This was the decision in Massachusetts, as early as 1813, in *Crocker* vs. *Whitney*, 10 Mass. 316, and reaffirmed in *Mowry* vs. *Todd*, 12 Id. 281. In Maryland, in *Allston* vs.

Contee, 4 H. & J. 351, a case argued by the present venerable Chief Justice of the United States, the same doctrine was held, and reaffirmed in *Barger* vs. *Collins*, 7 H. & J. 213. So in New Hampshire: *Currie* vs. *Hodgdon*, 3 N. H. 82; *Thompson* vs. *Emery*, 7 Foster 269. And in Vermont, *Moar* vs. *Wright*, 1 Verm. 57; *Bucklin* vs. *Ward*, 7 Id. 195. Such also is the law in Maine: *Smith* vs. *Berry*, 6 Shepley 122, and *Nonni* vs. *Hall*, Id. 332.

In New York, the same rule prevailed prior to the code which directs that suits shall be in the names of the real parties in interest: *Compton* vs. *Jones*, 4 Cowen 13; *DeForest* vs. *Frary*, 6 Id. 151; *Dubois* vs. *Doubleday*, 9 Wend. 317; *Jessel* vs. *Williamsburg Insurance Co.*, 3 Hill 88. In the revision of Swift's Digest, Vol. 1, p. 438, the law in Connecticut is thus stated: "The assignment of a chose in action will be a good consideration for the promise of the debtor to pay to the assignee, who may maintain an action in his own name on such promise." Which is also the settled law of Tennessee: *Mount Olivet Cemetery Co.* vs. *Shubert*, 2 Head 116.

This rule, so reasonable in itself, and so consonant to our ideas of justice, decides the present case, for the only real question before us was whether the additional count disclosed a sufficient cause of action. There is nothing in the other assignment of error.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF NEW YORK.[1]

Admissions and Declarations of a Grantor—Deed upon Condition—Forfeiture of Condition—Performance.—The admissions of a grantor in a deed, against his own interest and tending to establish a sufficient consideration for the deed, he being an original party to the record and identified in interest with the plaintiffs, are admissible in evidence against the plaintiffs, as part of the *res gestæ*: *Spaulding* vs. *Hallenbeck*.

[1] From the Hon. O. L. Barbour; to appear in the 39th volume of his Reports.